IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.684 of 2006

Indian Bank Employees Union
rep., by its General Secretary
Chennai.1. .. Petitioner/Tenant

vs.

Saifudin Abdul Kadar (deceased)

1.Mohammedshai Badruddin
2.Abdeali Mohammedbhai
3.Yakubali Hussain
4.Siraj Ali Hussain
5.Zoeb Hussain
6.Fazle Abbas Saifuddin
7.Mohammed Saifuddin .. Respondents/Landlord

Revision Petition filed against the judgment dated 9.1.2006 made in R.C.A No.288/2002, on the file of the VIII Small Causes Court, Chennai, confirming the order passed in R.C.O.P.No.874/1997, dated 5.7.2000 on the file of the X Small Causes Court, Chennai.

For Petitioners : Mr.R.Viduthalai,
Senior Counsel, for
M/s.M.Rangarajulu.

For Respondents : Mr.Perumbulavil Radhakrishnan

WEB COPY

ORDER:

The unsuccessful tenant before both the courts below is the revision petitioner herein. The respondents/landlords filed RCOP No.874/1997 under Sec.14(1)(b) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 18/1960 hereinafter called 'the Act') for evicting the revision petitioner/tenant from the premises bearing Door No.25, Jehangir Street, Chennai.1. The respondents have stated

https://hcservices.ecourts.gov.in/hcservices/

in the RCOP that the building is very old and is in a dilapidated condition. Therefore they want to demolish it and build a new building. The petition premises is located in the commercial area and the proposed new building would fetch far better returns. They also stated that they are men of means capable of raising sufficient funds to put up a new structure. They have also sent a letter dated 12.7.1996 offering alternative accommodation to the revision petitioner herein, but the revision petitioner has not opted to avail the offer.

2. The revision petitioner filed a counter in RCOP 874/1997 and resisted the eviction proceedings. According to the revision petitioner, the building is in good condition and as the landlords/respondents herein disconnected the water connection to the building, the tenant was forced to file RCOP No.465/1997 for restoration of water supply. In spite of the order of the Rent Controller to restore water supply, the same was not granted by the landlords. Instead, they have filed eviction petition which was not bona fide. The tenant has further pleaded that when the ground floor portion was under the occupation of M/s.Cadex Plastics (P) Ltd., without filing an eviction petition against them, there is no bona fide on the part of the landlords in filing the RCOP. Further the landlords have not filed the demolition certificate also.

3. The Rent Controller by an order dated 5.7.2000 allowed the RCOP and the same was confirmed by the Appellate Authority on 9.1.2006. Against the concurrent findings of the authorities below, the above revision petition has been filed by the tenant.

4. Heard the learned Senior Counsel appearing for the revision petitioner and the learned counsel for the respondents. I have also perused the documents filed in support of their submissions and the judgments referred to by them.

5. The learned Senior Counsel appearing for the petitioner contended that there is no bona fide on the part of the landlords in filing the RCOP under Sec.14(1)(b) of the Act. It was filed only as a counterblast to the act of the revision petitioner/tenant in approaching the Rent Controller for obtaining an order of restoration of water supply which was disconnected by the respondents/landlords. He further submitted that no sufficient and acceptable evidence like building plan, demolition certificate, etc., was let in by the landlords to prove their bona fide intention in demolishing the petition property. He relied on the following judgments in support of his submissions:-
(1) 1996(II) CTC 586 (Vijaya Singh etc., etc., v. Vijayalakshmi Ammal) and (2) 2006 SCCL.COM 213 (2006)I CTC 645/615 (S.Venugopal vs. A.Karruppusami & Anr.)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. Per contra, learned counsel for the respondents/landlords submitted that both the authorities below have considered the bona fide intention of the landlords and rendered a finding in favour of them which need not be disturbed by this court under Sec.25 of the Act. He also relied on 1996(II)CTC 586 (supra) and the following other judgments:-

(1) 1996(I) CTC 330 (Central Hameedia Stores v. Valliammal @ Rajammal; (2) 1996(II) CTC 733 (Kannan, S. v. Manoharan,P.); (3) 2000(I) CTC 287 (Akbar Ali v. Donian Rodrigo) and (4) (2004)5 SCC 241 (P.S.Pareed Kaka v. Shafee Ahmed Saheb).

7. In 1996(II)CTC 586 (supra) a Bench of five Judges of the Hon'ble Supreme Court considered Sec.14(1)(b) of the Act and rendered a finding as follows:-

> "6. On reading Section 14(1)(b) along with Section 16 it can be said that for eviction of a tenant on the ground of demolition of the building for erecting a new building, the building need not be dilapidated or dangerous for human habitation. If that was the requirement there is no occasion to put a condition to demolish within a specified time, and to erect a new building on the same site. Sub-section (1)of Section 16 contemplates that permission has been granted by the Rent Controller under Section14(1)(b) for demolition of the building, but if such demolition is not carried out in terms of the order and undertaking, then Rent Controller can order the landlord to put the tenant in possession of the building on the original terms and conditions. If the building is dangerous and dilapidated requiring immediate demolition for 'safety, then there is no question of Rent Controller directing landlord to put the tenant in possession of such building on the original terms and conditions, on account of the failure of the landlord to commence the demolition within the period prescribed. Similarly, there was no occasion to link the demolition of such building with erection of new building and then to give the landlord freedom from the restrictive provisions of the Act for a period of five years from the date on which the construction of such new building is completed and notified to the local authorities

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> concerned. In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. Permission under Section 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the same time it is difficulty to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission under Section 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bona fide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed under Section 14(1)(b). No court can fix any limit in respect of the age and condition of the building. That factor has to betaken into consideration along with other facts and then a conclusion one way or the other has to be arrived at by the Rent Controller.

8. in the above judgment, the Hon'ble Supreme Court has clearly held that for granting permission under Sec.14(1)(b), the Rent Controller is expected to consider all the relevant materials which includes (1) bona fide intention of the landlord; (2) the age and condition of the building; (3) the financial position of the building and (4) financial position of the landlord. The Hon'ble Supreme Court has also observed that all these are some of the illustrative factors which have to be taken into consideration.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. In 2006 SCCL.COM 213 (2006(II) CTC 615) cited supra, the Hon'ble Supreme Court has observed as follows:-

> "7. On the question of demolition and reconstruction of the premises in question, much was sought to be made out of the fact that the condition of the building had not been ascertained and, while according to the tenants it was not in a dilapidated condition, according to the landlord it was in a dilapidated condition. We do not attach much importance to the question as to whether the building was or was not in a dilapidated condition because Section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short 'the Act') contemplates a building which is bona fide required by the landlord for the immediate purpose of demolishing it, and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. Therefore, Section 14(1)(b) does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition. Even if a building is not in a dilapidated condition, it may be demolished for the purpose of erecting a new building on the same site."

10. In this case, the Hon'ble Supreme Court has stated that Sec.14(1)(b) does not contemplate that the building sought to be demolished must necessarily be in a dilapidated condition.

11. In 1996(I) CTC 330 (supra) this court has also observed that the condition of the building is not the sole ground to consider the application for demolition of building and it is the tenant who should let in evidence to prove that condition of the building does not require demolition.

12. In 1996(II) CTC 733 (supra) this court has held that submission of plan and licence before the Rent Controller is not statutory requirement to establish the bona fide of the landlord. This court has also reiterated the principle that the building need not be in a dangerous condition to seek eviction on the ground of demolition and reconstruction.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. In 2000(I) CTC 287 (supra) this court observed that it is not necessary for the landlord to produce currencies before court to show means while reiterating the principle that it is not necessary that building must be actually in dangerous condition.

14. In (2004)5 SCC 241 (supra), the Hon'ble Supreme Court further held that even a good building can be demolished if the landlord considers it to be unsuitable for him and there is no need for the landlord to prove that condition of the building was such that it required immediate demolition.

15. In the light of the above judgments, let me consider whether the authorities below are right in rendering a finding that the landlords have made out a case under Sec.14(1)(b) of the Act.

16. Before the Rent Controller, an Engineer was examined as P.W.2 by the landlords, who deposed that the building is 100 years old which is very weak and it developed cracks. The tenant has also admitted that he has been in occupation of the building for nearly 50 years and the engineer who let in evidence as R.W.2 on behalf of the tenant even though stated in his report that the building is 40 years old, admitted in the cross-examination that the building is approximately 55 to 60 years old. Therefore the condition of the building is old and weak has been clearly proved by evidence let in before the Rent Controller.

17. Insofar as the bona fide intention on the part of the landlords is concerned, Ex.P6 is the vital document which goes to prove that the landlords are bonafidely in requirement of the building for demolition.

18. Ex.P6 is a letter written to tenant by the landlords asking the tenant to shift their office to 2nd floor portion of Door No.15, Moore Street, Chennai.1 by way of alternative accommodation offered by them. It was admitted that P.6 was received by the tenant and no reply was sent accepting the offer. The Landlords themselves have come forward to offer alternative accommodation to the tenant and therefore I hold that the landlords proved their bona fide intention.

19. Insofar as not filing the eviction petition against the other tenant, namely, M/s.Cadex Plastics (P) Ltd., is concerned, it was admitted by the witness of the tenant (R.W.1) that as on date there is no tenant in the petition premises. Therefore it was established before the Rent Controller and the Appellate Authority that excepting the revision petitioner/tenant, there is no other tenant in the petition premises. The landlords have also produced their bank statement to prove that they are men of means and even otherwise in the changing scenario in this country it is very easy

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

for any owner of the property to raise sufficient loan from banks and financial institutions to put up new construction without difficulty, that too, with reasonable interest rate. P.W.1 who spoke on behalf of the landlords has clearly stated that he got permission for demolishing the property in 1991 itself and as the same expired by efflux of time, he has to apply afresh. Therefore not filing the demolition certificate cannot be held against the landlords.

20. If the facts are considered and analysed in the light of the illustrative factors mentioned in 1996(II) CTC 586 (supra), I am of the considered view that the respondents/landlords have proved their case for evicting the revision petitioner/tenant under Sec.14(1)(b)of the Act. When both the authorities below have concurrently evaluated the evidence to come to a finding in favour of the landlords, the same cannot be interfered with by this court under Sec.25 of the Act.

21. Consequently, there is no merits in the revision petition and the same is dismissed as devoid of merits and the order and judgment of the authorities below are upheld. No costs. C.M.P.No.5612/2006 is also dismissed.

After pronouncement of the order today, the learned counsel for the tenant/petitioner sought for time for the tenant to vacate the premises and hand over the vacant possession. Accordingly, four months time is granted to the tenant/petitioner from today to vacate and hand over the vacant possession of the premises in question to the landlords/respondents, on condition that the tenant/petitioner file an affidavit to this effect within a period of seven days from today, after serving a copy of the same to the learned counsel for the respondents/landlords.

Post the matter on 26.06.2006.

19.06.2006.

jrl

This petition having been posted on 26.6.2006, for further orders subsequent to the order of this Court dated 19.6.2006 and made herein and in the presence of the aforesaid Advocates, the Court made the following Order:

As directed by this Court, an affidavit has been filed by the tenant/Petitioner undertaking to vacate the premises and hand over the vacant possession to the landlords/respondents within a period

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of four months from today. This undertaking would also form part of the order passed by this Court in C.R.P.NPD.No.684/2006 dated 19.6.2006.

26.6.2006

akv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, Small Causes Court, Chennai.104
2. The VIII Judge, Small Causes Court, Chennai.104
3. The X Judge, Small Causes Court, Chennai.104

1 cc to Mr.Perumbulavil Radhakrishnan, Advocate, SR.26839
jp (co)

dv/23.6.06

ng (co)

dv/4.7.06

C.R.P.NPD.No.684 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/